

1 THE HONORABLE KAREN A. OVERSTREET
2 Chapter: 11
3 Hearing Date: February 12, 2010
4 Hearing Time: 11:00 am
5 Place: US Courthouse
6 Response Due: February 5, 2010
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8
9

10 Karen L. Gibbon
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17 UNITED STATES BANKRUPTCY COURT
18 FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE
19

20 In re:) No. 09-19609
21)
22 KARL J. REINKE) MEMORANDUM IN SUPPORT OF MOTION
23) FOR TERMINATION OF STAY
24 _____ Debtor(s).)
25
26

27 **HEARING DATE:** February 12, 2010
28

29 **HEARING TIME:** 11:00 am
30

31 **PLACE:** Courtroom 7206
32 US Courthouse
33 700 Stewart St.
34 Seattle, WA 98101
35

36 **RESPONSE DATE:** February 5, 2010
37

38 **I. FACTS**

39 The debtor Karl J. Reinke (the "debtor") is the owner in fee simple title of a parcel of property
40 commonly known as 20001 Damson Rd, Lynnwood, WA 98036 and legally described as follows (the
41 "Property"):
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43 LOT 1 OF SHORT PLAT SP259 (6-77) RECORDED UNDER AUDITOR'S FILE NUMBER 7711180353,
44 BEING A PORTION OF LOT 35, BLOCK 23, ALDERWOOD MANOR NO. 5, RECORDS OF
45 SNOHOMISH COUNTY, WASHINGTON. SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF
46 WASHINGTON. (TAX PARCEL ID #: 00373002303601)
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48 MEMORANDUM IN SUPPORT OF
49 MOTION FOR RELIEF FROM STAY - 1
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51 LAW OFFICES OF
52 **KAREN L. GIBBON, P.S.**
53 A PROFESSIONAL SERVICE CORPORATION
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On or about March 21, 2005, the debtor executed a promissory note in favor of First Franklin, a division of Nat. City Bank of IN ("First Franklin") in the principal sum of \$251,200.00, together with interest thereon at a variable rate per annum. The note provides that the debtor shall pay monthly installments of principal and interest commencing on May 1, 2005, and continuing on the first day of each month thereafter until the note is fully paid. The note was set to mature on April 1, 2035.

The note is secured by a deed of trust on the Property granted by the debtor to First Franklin. The deed of trust on the Property was recorded on March 31, 2005 under Snohomish County Auditor's File No. 200503310852.

Wells Fargo Bank, N. A. as Trustee for National City Mortgage Loan Trust 2005-1, Mortgage-Backed Certificates, Series 2005-1 ("Secured Creditor") is the current holder of the note. The beneficial interest under the deed of trust was assigned to Secured Creditor under an assignment.

The debtor is in default under the note and the deed of trust on the Property. He has failed to make the monthly payments under the note and deed of trust which have fallen due since December 1, 2008 and is currently fourteen installments delinquent. As of January 5, 2010, the total amount delinquent on the loan was \$30,138.31 and the total amount due on the loan was \$257,591.52. Secured Creditor has advanced funds in the amount of \$3,152.21 to pay for property taxes and/or insurance. These charges are continuing to accrue.

In addition to the lien of Secured Creditor, the Property is further encumbered by a junior deed of trust in excess of \$65,314.59. Thus, the liens against the Property total in excess of \$322,906.11.

The debtor filed this Chapter 11 bankruptcy proceeding on September 17, 2009. He has not yet filed a plan. The debtor schedules the value of the property at \$321, 500.00.

II. AUTHORITY

11 U.S.C. Section 362(d) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or (2) with respect to a stay of an act against property under subsection (a) of this section, if --(A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization.

MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY - 2

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The encumbrance held by Secured Creditor on the Property exceeds \$257,591.52. The scheduled value of the Property is \$321,500.00. The debtor has little, if any, equity in the Property, given that the usual and necessary costs of sale would approximate ten percent (10%) of the selling price.

Further, the debtor is fourteen (14) months delinquent in payments due under the note and deed of trust. The failure to make periodic payments on a secured debt for a substantial period of time, in of itself, constitutes sufficient cause for granting relief from stay under Section 362(d). In re Three Tuns, Inc., 35 B.R. 110 (Bankr. E.D. Pa. 1983); In re Hinkle, 14 B.R. 202 (Bankr. E.D. Pa. 1981).

In addition, Secured Creditor lacks adequate protection of its interest in the Property as a result of the debtor's continued delinquency. As a result of the debtor's default, the monthly escrow payments have not been made for the maintenance of fire insurance and taxes, requiring Secured Creditor to advance funds in the amount of \$3,152.21 in payment of these expenses. Again, this, in and of itself, is sufficient cause to grant Secured Creditor relief from stay. *In re Ausherman*, 34 B.R. 393 (Bankr. N.D. Ill. 1983).

III. CONCLUSION

For the above reasons, Secured Creditor respectfully requests that the Court enter an order terminating the automatic stay of Section 362(a), permitting Secured Creditor to pursue all of the remedies provided under its note and deed of trust and under the provisions of state law on the Property.

Respectfully submitted this 8th day of January, 2010..

**LAW OFFICES OF KAREN L. GIBBON, P.S.
Attorneys for Secured Creditor**

By: /s/ Karen L. Gibbon
Karen L. Gibbon
WSBA# 7095

MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY - 3

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